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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,834	12/21/2001	Brian G. Morin	5389	4942

7590 04/08/2004  
Milliken & Company  
P.O. Box 1927  
Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/036,834

Applicant(s)

MORIN ET AL.

Examiner

Cheryl Juska

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1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/17/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

### ***Response to Amendment***

2. Applicant's amendment filed February 17, 2004, has been entered. Claims 4, 5, 7, 8, 10, and 11 have been amended as requested. New claims 13 and 14 have been added. Thus, the pending claims are 4-14.

3. Applicant's amendment to claims 4-12 is sufficient to withdraw the 102 rejection of said claims by US 6,541,5554 issued to Morin et al. as set forth in section 7 of the last Office Action. Specifically, the claims are now limited to a tufted carpet having a pile layer and a backing layer. Since Morin does not explicitly teach said carpet, the 102 rejection is hereby withdrawn. Note a 103 rejection is not made due to applicant's statement of co-assignment under 103(c) in the response filed on August 11, 2003.

4. Additionally, applicant's amendment and arguments with respect to the 102/103 rejection over JP 2001-081628 issued to Inoue, as set forth in section 8 of the last Office Action, are

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sufficient to withdraw said rejection. Specifically, Inoue teaches a needle-punched nonwoven carpet rather than the presently claimed tufted carpet.

***Terminal Disclaimer***

5. The terminal disclaimer does not comply with 37 CFR 1.321(b) and/or (c) because:

An attorney or agent, not of record, is not authorized to sign a terminal disclaimer in the capacity as an attorney or agent acting in a representative capacity as provided by 37 CFR 1.34

(a). See 37 CFR 1.321(b) and/or (c).

***Double Patenting***

6. Claims 4-12 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of US 6,541,554 issued to Morin et al. as set forth in section 6 of the last Office Action.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 4-12 stand rejected under 35 USC 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of US 5,798,167 issued to Conner et al., as set forth in section 9 of the last Office Action.

***Response to Arguments***

9. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

10. Applicant traverses the Fujishita and Conner rejection by asserting that Fujishita does not the presently claimed shrinkage rate of less than 2% (Amendment, page 8, 2<sup>nd</sup> paragraph).

Specifically, applicant asserts that the lowest shrinkage rate Fujishita teaches is 3.3, which is about 60% less than that claimed by applicant. This argument is found unpersuasive. In particular, the claimed shrinkage rate is measured after five minutes, while Fujishita measures said shrinkage after 15 minutes. Thus, the values taught by Fujishita cannot be directly compared to those claimed by applicant. Hence, it is reiterated that if the claimed shrinkage values are not inherently met by the Fujishita invention, said values would be met by the combination of the teachings of Fujishita and Conner. Therefore, said rejection is maintained.

***New Claim Rejections***

11. New claim 13 and 14 are rejected under 35 USC 103(a) as being unpatentable over US 4,560,734 issued to Fujishita et al. in view of US 5,798,167 issued to Conner et al.

New claim 13 limits the tufted carpet of claim 10 wherein the polypropylene tape fibers have a shrinkage rate after exposure to 150C hot air of less than about 2%. As noted above, this limitation is insufficient to overcome the cited combination of art. Hence, claim 13 is rejected over the cited prior art.

New claim 14 differs from claim 4 in that (a) the shrinkage value of claim 4 is not recited in claim 14 and (b) the nucleator compound is limited to a DBS derivative. While Fujishita only

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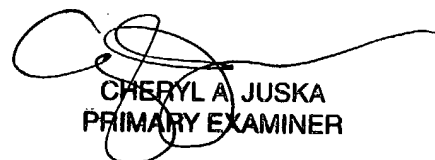
teaches DBS as a nucleating agent, Conner clearly teaches DBS and its derivatives as suitable nucleating agents. Thus, it would have been obvious to one skilled in the art to employ a known equivalent of DBS, such as a DBS derivative, as taught by Conner, for the nucleating agent of Fujishita. Therefore, claim 14 is also rejected over the cited prior art.

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
April 5, 2004